

FOUR PENN CENTER
SUITE 200
1600 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19103-2808
TELEPHONE 215.563.9400
FACSIMILE 215.665.9988
WWW.GGELAW.COM

GC&E GOLLATZ
GRIFFIN
& EWING
ATTORNEYS - AT - LAW

ERIC M. HOCKY
DIRECT DIAL 215.320.3720
emhocky@ggelaw.com

August 2, 2005
VIA: electronic filing

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Pittsburg & Shawmut Railroad, LLC -
Abandonment Exemption
STB Docket No. AB-976 (X)
Reply to Public Use Request

Dear Secretary Williams:

Enclosed for filing is the Reply of Pittsburg & Shawmut Railroad, LLC to Public Use Request. Please let us know if you need any additional information.

Respectfully,



Eric M. Hocky
Attorneys for
Pittsburg & Shawmut Railroad, LLC -

cc (via email):
Armstrong County)
Jefferson County)
c/o planning@co.armstrong.pa.us

Before the
SURFACE TRANSPORTATION BOARD

Docket No. AB-976 (X)

**REPLY OF PITTSBURGH & SHAWMUT RAILROAD, LLC
TO PUBLIC USE REQUEST**

By letter dated July 11, 2005 (received by the Board on July 22, 2005), Armstrong and Jefferson Counties (the “Counties”) requested that the Board impose a public use condition on the proposed abandonment which is the subject of this proceeding. Pittsburgh & Shawmut Railroad, LLC (“PSR LLC”) hereby replies to the request for a public use condition.¹

STANDARDS FOR PUBLIC USE CONDITION

Under 49 U.S.C. §10905 and 49 C.F.R. §1152.28, the Board may impose a public use condition where the Board finds that the “rail properties” to be abandoned are appropriate for public purposes and are not required for continued rail operations, and where the requesting party demonstrates the public importance of the condition and justifies the imposition of the time period. If imposed, the railroad may dispose of the properties only on conditions prescribed by the Board.

DISCUSSION

In its request, the Counties have requested that the Board impose a 180 day condition prohibiting sale of “the corridor”, other than tracks, ties and signal equipment, except for public use. The essential public use desired is conversion of the property to recreational trail

¹ The July 11 letter from the Counties also requested interim trail use. PSR LLC agreed to enter into trail use negotiations in a letter filed with the Board on July 26, 2005.

use.

PSR LCC believes that the public use condition should be denied. PSR LLC has indicated in its Petition for Abandonment that it intends to retain the track between milepost 22.0 and milepost 24.0, as well as the track between milepost 56.0 and milepost 62.0, for operation as private sidetracks or spurs. Since those portions of the line will continue to be used for rail purposes, they should not be made subject to a public use condition.

Further, the Counties have failed to demonstrate a need for the public use condition. The public use proposed is for a trail, and PSR LLC has already agreed to enter into trail use negotiations with the Counties.² The trail use negotiation should be sufficient to protect the Counties' interest.

Additionally, the Counties' request should be denied because it does not clearly define the property that would be subject to the public use condition. The Counties' request applies to "the corridor" while the statute and regulations provide that it can apply only to "rail properties." In this instance it is important for the Board to recognize that the Counties do not have the right to seek a public use condition on any property owned by PSR LLC outside of the 20-foot right of way that includes the rail line (and associated structures such as bridges, trestles, culverts and tunnels).³ As described in the Environmental/Historic Report filed by PSR LLC in this proceeding, the width of the property owned by PSR, LLC through which the subject rail

² The offer of PSR LLC to negotiate was subject to the proviso that PSR LLC not be prevented from salvaging the tracks, ties, signal equipment and other track materials or property outside of the right of way that would be necessary for trail use.

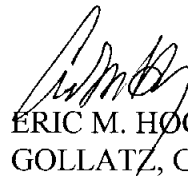
³ A 20-foot right of way is sufficient for trail use.

line runs varies from 100 feet to 2,000 feet wide. Neither the Board's jurisdiction, nor the provisions of Section 10905, permit the Board to impose public use conditions outside of the right-of-way that includes the subject line of railroad. Various parties have expressed interest in acquiring from PSR LLC rights to various parcels that would not interfere with development of a trail, and the Board should not impose any condition that would interfere with such transactions.⁴

CONCLUSION

For the foregoing reasons, PSR LLC requests that the Board deny the request of the Counties for a public use condition.

Respectfully submitted,



ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
Four Penn Center, Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103
(215) 563-9400
Attorneys for Pittsburgh & Shawmut, LLC

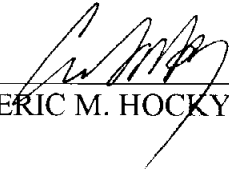
Dated: August 2, 2005

⁴ If the Board were to impose a public use condition, it should make it clear that the condition only applies to the 20-foot right of way that includes the rail line being abandoned.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served electronically on:

Armstrong County
Jefferson County
c/o planning@co.armstrong.pa.us



ERIC M. HOCKY, ESQ.

Dated: August 2, 2005, 2005